

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 249 Protection of Persons and Property
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary Committee</u>	<u></u>	<u>Thomas</u>	<u>Hogge</u>
2) <u>Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill addresses provisions relating to the justifiable use of force.

It creates a presumption under certain conditions that a person has a reasonable fear of imminent peril of death or bodily harm to himself or herself or to another person and may use deadly force in response.

It provides that a person does not have a duty to retreat from a dwelling, residence, vehicle, or place "where the person has a right to be."

It provides immunity to a person who has used justifiable force in the defense of himself or herself or another person from criminal prosecution and civil action for the use of such force.

It provides that the bill will take effect upon becoming a law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: the bill creates and amends liability and sanction provisions relating to unlawful and injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

General Background

Florida has long been under the “castle doctrine” which provides that a person attacked in his or her own home or premises may stand his or her ground and use such force as may appear reasonably necessary to save his or her life of the life of another, or to save himself or herself or another from great bodily harm and the person has no duty to retreat, but may not lie in wait for his attacker.¹

The “castle doctrine” has been extended by Florida Courts to include employees in their places of employment while lawfully engaged in their occupations.² The Courts have declined to extend the doctrine to a temporary visitor or guest in a residence.³ The Courts have also found that a duty to retreat, if possible, does exist when the attacker and the person using force were husband and wife living in the same home.⁴

Chapter 776, Florida Statutes, and associated case law, govern the use of force in the state by a citizen against another. In general, the statutes provide that a person may justifiably use the same degree of force that is used against him or her by another person to such an extent that the first person reasonably believes such force is necessary to prevent harm to himself, another, or the interference with certain property.

Florida courts have defined “deadly force” as occurring when the natural, probable, and foreseeable consequences of the defendant’s acts are death.⁵ Discharge of a firearm has been held as a matter of law to constitute deadly force because a firearm is by definition a deadly weapon.⁶ “Deadly force” is statutorily defined as “force that is likely to cause death or great bodily harm,” including, but not limited to:

- Firing a firearm in the direction of the person, even though there is no intent to kill or inflict great bodily harm.
- Firing a firearm at a vehicle.⁷

Forcible felony is defined in s. 776.08, F.S. as:

- Treason
- Murder
- Manslaughter
- Sexual battery

¹ *Danford v. State*, 43 So. 593 (Fla. 1907).

² *Redondo v. State*, 380 So.2d 1107 (Fla. 3d DCA 1980); *State v. Smith*, 376 So.2d 261 (Fla. 3d DCA 1979).

³ *State v. James*, 867 So.2d 414, (Fla. 3d DCA 2004).

⁴ *State v. Bobbitt*, 415 So.2d 724 (Fla. 1982).

⁵ *Garramone v. State*, 636 So.2d 869 (Fla. 4th DCA 1994).

⁶ *Miller v. State*, 613 So.2d 530 (Fla. 3d DCA 1993).

⁷ Section 776.06(1), F.S.

- Carjacking
- Home-invasion robbery
- Robbery
- Burglary
- Arson
- Kidnapping
- Aggravated assault
- Aggravated battery
- Aggravated stalking
- Aircraft piracy
- Unlawful throwing, placing, or discharging of a destructive device or bomb
- Any other felony involving the use or threat of physical force or violence against any person.

Section-by-Section Analysis

Whereas Clauses

The bill contains several whereas clauses to provide legislative findings regarding:

- the necessity to restore rights of people to protect themselves, their families and others, and their property from intruders and attackers without fear of prosecution or civil action
- the “castle doctrine” and its origins
- basic rights of all persons
- the rights of citizens to expect absolute safety
- a person’s ability to protect himself or herself from intruders and attackers

Section 1: Creates s. 776.013, F.S., relating to home protection; use of deadly force; presumption of fear of death or bodily injury

Proposed Changes

This newly created section provides that a person is presumed, rather than having the burden to prove, to have a reasonable fear of imminent peril of death or bodily harm to himself or herself or to another person when that person has used defensive force that was intended to, or likely to, cause death or bodily injury to another if:

- The person against whom the force was used had unlawfully or forcefully entered a dwelling, residence, or vehicle.
- The person against whom the force was used had attempted to unlawfully or forcefully enter a dwelling, residence, or vehicle.
- The person against whom the force had removed or attempted to remove another person from the dwelling, residence, or vehicle.
- The person using force knew or had reason to believe that an unlawful or forcible entry or unlawful or forcible act had occurred.

The bill provides that a person does not have a duty to retreat from a dwelling, residence, vehicle, or place “where the person has a right to be.”

The bill provides that a person who unlawfully enters or attempts to enter a dwelling, residence, or occupied vehicle is presumed to have entered with the intent to commit an unlawful act involving force or violence. This removes the burden from the person using such force to prove the intent of the person who had unlawfully entered or attempted to enter.

The bill provides the following definitions:

- “Dwelling” – to mean a building or conveyance (car, trailer, boat, cart, etc.) designed for lodging at night, including any attached porch, that has a roof, whether the dwelling or conveyance is temporary or permanent, mobile or immobile, and includes the curtilage thereof (enclosed land surrounding the dwelling).
- “Residence” – to mean a dwelling in which a person resides, whether permanently or temporarily, or as an invited guest.
- “Vehicle” – to mean any conveyance (car, trailer, boat, cart, etc.), whether or not it is motorized, that is designed to transport people or property.

Section 2: Amending s. 776.012 F.S., relating to the use of force in defense of a person

Present Situation

In defense of self or another, a person is justified in using force that falls short of deadly force when and to the extent he or she reasonably believes it is necessary to defend against another’s imminent use of unlawful force.

With regard to defense of property, a person is justified using non-deadly force against another when he or she reasonably believes it is necessary, under the following circumstances:

- To prevent or end another’s trespass upon or interference with real property (other than a dwelling),
- or personal property,
- so long as the property is in his or her lawful possession, or the possession of his or her immediate family or one whose property he or she has a legal duty to protect.

Proposed Changes

The bill amends s. 776.012, F.S., relating to the use of force in defense of a person to authorize a person to use any force, including deadly force, against a person when the person using such force reasonably believes that such force is necessary to defend himself or herself against the other person’s use of unlawful force or to prevent the imminent commission of a forcible felony. The bill removes the present restriction on the use of deadly force from just those situations where the person using force reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or to another person. The bill provides that a person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Section 3: Amending s. 776.013 F.S., relating to the use of force in defense of others

Proposed Changes

The bill amends s. 776.013, F.S., relating to the use of force in defense of another person to provide that a person does not have a duty to retreat if the person is in a place “where he or she has a right to be.”

Section 4: Creating s. 776.032, F.S., relating to immunity from criminal prosecution and civil action for justifiable use of force

Proposed Changes

The bill creates s. 776.032, F.S., to provide immunity from criminal prosecution and civil action to a person who has used justifiable force in the defense of himself or herself or another person.

The bill provides that a law enforcement agency may use its standard procedures for investigating the use of force, but that it may not arrest a person for using force unless it determines that probable cause exists showing that the force used was unlawful.

The bill provides that a court must award attorney's fees, court costs, compensation for any loss income, and compensation for all expenses incurred by a person in defense of a criminal prosecution for the use of force if the court finds that the person prosecuted is immune from such prosecution. The bill provides that such an award would be paid by the law enforcement agency or the state attorney that had brought the criminal prosecution.

The bill provides that a court must award attorney's fees, court costs, compensation for any loss income, and compensation for all expenses incurred by a person in defense of any civil action for the use of force if the court finds that the person sued is immune from prosecution. The bill provides that such an award would be paid by the plaintiff and the plaintiff's attorney that had brought the civil action, and that the plaintiff and the plaintiff's attorney would be jointly and severally liable for the award.

Section 5: Amending s. 776.041, F.S., relating to use of force by an aggressor

Present Situation

The statutory justifications for the use of force are not applicable to the initial aggressor if:

- The initial aggressor is committing, attempting to commit, or escaping after the commission of a forcible felony, or
- The initial aggressor initially provoked the use of force against him or herself

Proposed Changes

The bill amends s. 776.041, F.S., relating to the use of force against an aggressor to eliminate the claim of self-defense by an initial aggressor when the original victim of his or her aggression resorts to force so great that the initial aggressor reasonably believes that he or she is in imminent danger of death or great bodily harm and has exhausted every reasonable means to get away from that danger.

Section 6: Effective Date

Provides that the bill will take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Creates section 776.013, Florida Statutes, relating to use of deadly force.

Section 2: Amends section 776.012, Florida Statutes, relating to use of force in defense of a person.

Section 3: Amends section 776.013, Florida Statutes, relating to use of force in defense of others.

Section 4: Creates section 776.032, Florida Statutes, relating to immunity from criminal prosecution and civil action for justifiable use of force.

Section 5: Amends section 776.041, Florida Statutes, relating to use of force by an aggressor.

Section 6: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

See Fiscal Comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no apparent economic impact on the private sector by this bill.

D. FISCAL COMMENTS:

The bill requires a court to award costs, fees, and lost income to the defendant in a criminal case who is found to be immune from prosecution under its terms, payable by the law enforcement agency or the prosecuting state attorney. Such amounts, if ever paid or collected, are indeterminable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable under this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES